

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
3 - - - - -
4 The State of Minnesota,
5 by Hubert H. Humphrey, III,
6 its attorney general,
7 and
8 Blue Cross and Blue Shield
9 of Minnesota,
10 Plaintiffs,
11 vs. File No. C1-94-8565
12 Philip Morris Incorporated, R.J.
13 Reynolds Tobacco Company, Brown
14 & Williamson Tobacco Corporation,
15 B.A.T. Industries P.L.C., Lorillard
16 Tobacco Company, The American
17 Tobacco Company, Liggett Group, Inc.,
18 The Council for Tobacco Research-U.S.A.,
19 Inc., and The Tobacco Institute, Inc.,
20 Defendants.
21 - - - - -

22 TRANSCRIPT OF PROCEEDINGS
23 VOLUME 38, PAGES 7472 - 7530
24 MARCH 12, 1998
25

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REDIRECT EXAMINATION - CHERYL L. PERRY

1 P R O C E E D I N G S.
2 THE CLERK: All rise. Ramsey County
3 District Court is again in session, the Honorable
4 Kenneth J. Fitzpatrick now presiding.
5 (Jury enters the courtroom.)
6 THE CLERK: Please be seated.
7 THE COURT: Good morning.
8 (Collective "Good morning.")
9 THE COURT: Counsel, would you approach,
10 please.
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1 (Side-bar discussion as follows:)
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(Side-bar discussion concluded.)

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1 THE COURT: Counsel.
2 MS. WALBURN: Thank you, Your Honor.
3 Good morning, ladies and gentlemen.
4 (Collective "Good morning.")
5 CHERYL L. PERRY
6 called as a witness, being previously
7 sworn, was examined and testified as
8 follows:
9 REDIRECT EXAMINATION (cont'd)
10 BY MS. WALBURN:
11 Q. Good morning, Professor Perry.
12 A. Good morning.
13 Q. Back on Tuesday, Mr. Weber was listing a number
14 of factors on the easel and asking you whether those
15 factors related to the onset of smoking. Do you
16 recall that?
17 A. Yes, I do.
18 Q. Would you turn in the Surgeon General's report
19 of 1994 to the table of contents, and could you tell
20 us how many of the factors that were discussed on
21 Tuesday have a separate chapter written about them in
22 the 1994 Surgeon General's report.
23 A. There is only one, one of the factors.
24 Q. And which factor is that?
25 A. Tobacco advertising and promotional activities,

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1 chapter five.
2 Q. What's the significance of that?
3 A. That we thought that was important enough to
4 warrant its own chapter.
5 Q. And does advertising and promotional activities
6 affect some of the other factors that Mr. Weber was
7 asking you about on Tuesday?
8 A. Yes, they do. Advertising and promotional
9 activities can affect peers, the peer group, it can
10 affect their perceptions of how normative smoking is,
11 that is, how many people smoke, and it increases the
12 attractiveness and function of smoking.
13 Q. Mr. Weber also asked you a number of questions

14 about risk-taking. Based on your review of the
15 tobacco company internal documents, were the tobacco
16 companies aware that youth are risk-takers?
17 A. Yes, they were.
18 Q. Would you turn in book three to Exhibit 12989.
19 This is a 1989 R. J. Reynolds document which you
20 discussed in your direct testimony labeled "CAMEL Y&R
21 ORIENTATION." Would you turn to page Bates numbers
22 1728, and do you see on this page, this page states
23 "Personal Quality Wants," and it lists a number of
24 attributes. Is "Risk Taker" one of those attributes
25 listed on this page?

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1 A. Yes, it is.
2 Q. Would you turn then to page 1829 of the same
3 document. At the very top of the page, it's obscured
4 in part by the stamp, but if you go up to the top of
5 the page, it states "CAMEL 1990 OVERVIEW, Managing
6 The Brand Personality," and the document states,
7 "What makes the 'Brand Personality' ownable to Camel
8 is the utilization of the 'Smooth Character' himself,
9 Joe Camel."
10 "Joe 'The Ultimate Smooth Character' Camel is:"
11 And then if you go down to the bullet points,
12 "Into challenges and likes to take risks."
13 What's the significance of that?
14 A. That RJR recognized that under-age youth take
15 risks, and they exploited that through the Joe Camel
16 character.
17 Q. And the last bullet point states "Independent,
18 yet admired and respected by peers."
19 A. Yes. RJR recognizes that that's part of the
20 developmental tasks of adolescence and exploited that
21 through the Joe Camel character.
22 Q. Mr. Weber also referenced part of the preface of
23 the 1994 Surgeon General's report. Could you turn to
24 that preface, please. And I'd first like to read a
25 couple of the paragraphs that preceded the paragraph

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1 referenced a couple of days ago, starting in the
2 first paragraph with the second-to-last sentence.
3 "These current and future smokers are new recruits in
4 the continuing epidemic of disease, disability, and
5 death attributable to tobacco use. When young people
6 no longer want to smoke, the epidemic itself will
7 die."
8 "This report of the Surgeon General, Preventing
9 Tobacco Use Among Young People, delineates the
10 problem in no uncertain terms. The direct effects of
11 tobacco use on the health of young people have been
12 greatly underestimated. The long-term effects are,
13 of course, well established. The addictive nature of
14 tobacco use is also well known, but it is perhaps
15 less appreciated that early addiction is the chief
16 mechanism for renewing the pool of smokers. Most
17 people who are going to smoke are hooked by the time
18 they are 20 years old.

19 "Young people face enormous pressures to smoke.
20 The tobacco industry devotes an annual budget of
21 nearly 4 billion dollars to advertising and promoting
22 cigarettes. As this report so well describes, there
23 has been a continuing shift from advertising to
24 promotion, largely because of banning cigarette ads
25 from broadcast media. The effect of the ban is

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1 dubious, however, since the use of promotional
2 materials, the sponsoring of sports events, and the
3 use of logos in nontraditional venues may actually be
4 more effective in reaching target audiences.
5 Clearly, young people are being indoctrinated with
6 tobacco promotion at a susceptible time in their
7 lives."

8 Do you agree with those statements of the
9 Surgeon General in 1994?

10 A. Yes, I do.

11 Q. The Surgeon General here mentions a number of
12 nearly four billion dollars a year spent in
13 advertising and promoting cigarettes; is that
14 correct?

15 A. Yes, that's correct.

16 Q. Do you know what has happened to that number
17 since the Surgeon General's report was written?

18 A. Yes, it's increased since the time of the
19 Surgeon General's report.

20 Q. And you were asked some questions about the
21 correlation between the amount of money spent on
22 advertising and promotion and trends in smoking, and
23 you testified that at the same time that advertising
24 and promotion dollars were increasing, there were
25 efforts at tobacco control and youth prevention. Do

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1 you recall that?

2 A. Yes, I do.

3 Q. Can one purpose of advertising and promotion be
4 to stop or slow a decline in sales?

5 MR. WEBER: Objection, Your Honor, it's a
6 leading question.

7 THE COURT: It is leading.

8 Q. Can advertising and promotion serve different
9 purposes?

10 A. Yes. Advertising and promotion can increase the
11 market or it can slow a decreasing market. So if a
12 market is decreasing, it can serve to slow it down,
13 slow down that decrease.

14 Q. Would you turn in the defense exhibits to tab
15 19, Exhibit AM000596, and this is the University of
16 Michigan Monitoring the Future Survey, 1997. Do you
17 recall discussing this document with Mr. Weber?

18 A. Yes, I do.

19 Q. Would you turn to the press release that is
20 about three pages in to the document, and in the
21 third paragraph -- this is quoting Lloyd Johnston,
22 one of the University of Michigan researchers, and
23 Mr. Johnson states, "'Cigarette smoking constitutes

24 the largest threat to the health and longevity of
25 this generation of young Americans,' states Johnston,
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1 'which makes the substantial increases in their
2 smoking rates over the past five or six years of
3 particular concern.'"

4 Based on this document and the numbers in this
5 document, what's happened to the smoking rates in the
6 last five or six years?

7 A. The smoking rates among under-age teens has gone
8 up.

9 Q. And would you turn to the next page of the
10 document. In the third full paragraph that starts
11 "Finally, it should be kept in mind...", the document
12 states, "Finally, it should be kept in mind that
13 these surveys cover only those young people who
14 remain in school. Based on these several facts, it
15 is hard to escape the conclusion that an exceptional
16 number of these young people are going to be regular
17 smokers by the time they become young adults, and it
18 is estimated that as many as a third of those who do
19 become chronic smokers will die prematurely from the
20 ravages eventually brought on by their smoking."

21 What's the significance of that statement?

22 A. That adolescents who smoke, a large percentage
23 of them will die prematurely from smoking-related
24 diseases that they -- that -- that began with their
25 smoking during their under-age teen years.

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1 MR. WEBER: Your Honor, I -- I'd object and
2 move to strike the medical testimony. This is not a
3 medical witness.

4 THE COURT: Okay. Well I think she can
5 quote the Surgeon General's report.

6 Q. Would you turn in volume two of your exhibits,
7 please, to Exhibit 26063, and this is the article
8 which Caroline Schooler and several other authors?

9 A. Yes, it is.

10 Q. Would you turn in this to page 1219. In the
11 middle column under the section "Mail Distribution of
12 Promotions" --

13 A. Yes.

14 Q. -- these researchers state, "Seventeen percent
15 of participants reported having received mailings
16 such as surveys, coupons, free gifts, product
17 catalogs, or free cigarettes addressed to themselves
18 from cigarette companies."

19 What's the significance of that statement?

20 A. That 17 percent, nearly one in five, seventh
21 graders, that's 12-13 years old, had received
22 mailings from tobacco companies that were addressed
23 to them, to them, and they're 12-13 years old.

24 Q. And would you turn now to another exhibit used
25 by Mr. Weber, tab five of your book, Exhibit

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1 AT000507, and this is a Federal Register publication
2 by the Food and Drug Administration?

3 A. Yes, it is.

4 Q. What is the FDA reporting on in this
5 publication?

6 A. They're focus --

7 They're reporting on focus groups' discussions
8 that they conducted with under-age teens about new
9 warning labels that might be put on cigarettes that
10 might be more appropriate for under-age teens.

11 Q. And would you look on the first page to the
12 third column under the section "Assumptions and Basic
13 Perceptions of Adolescent Smoking," and in the second
14 paragraph there toward the end, in the last sentence,
15 the FDA states that "Nonsmokers or infrequent smokers
16 indicated that they felt most people could stop
17 smoking at any time. The teens who said they were
18 addicted to smoking made it clear that, for them,
19 smoking was no longer a matter of choice but a matter
20 of need."

21 What's the significance of that statement?

22 A. That teens themselves can become addicted to
23 smoking, and they themselves recognize that.

24 Q. And would you turn in this FDA report to page
25 61674. In the middle column under paragraph number

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1 three, the FDA states that "Many participants
2 expressed the belief that the Surgeon General's
3 warnings were difficult to understand. They did not
4 know what effect carbon monoxide would have on them,
5 for example, and many participants did not know what
6 emphysema was."

7 What's the significance of that statement?

8 A. Well this is just further evidence that young
9 people, under-age teens, really can't understand the
10 consequences of smoking.

11 Q. And would you turn to the proposed warning
12 labels in this document, and would you read the first
13 two warning labels that were being discussed in these
14 focus groups.

15 A. Yes. The first one says, "About 1 out of 3 kids
16 who become smokers will die from their smoking." And
17 the second one says, "About 1 out of 3 kids who
18 become smokers will die from their smoking."

19 Q. Counsel asked you a number of questions about
20 cartoon characters used for other products or
21 services. Do you know whether the products or
22 services promoted by the following characters killed
23 about one out of three of the kids who used the
24 products or services:

25 Garfield the Cat?

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1 MR. WEBER: I'd object to the argumentative
2 nature of the question, use of the word "killed,"
3 Your Honor.

4 THE COURT: You'll have to rephrase it,

5 counsel.
6 BY MS. WALBURN:
7 Q. Do you know whether the products or services
8 promoted by the following characters were reported to
9 cause the death of one out of three of the people who
10 use those products or services:
11 Garfield the Cat?
12 A. No.
13 Q. Snoopy?
14 A. No.
15 Q. The Michelin Man?
16 A. No.
17 Q. The Pink Panther?
18 A. No.
19 Q. The Jetsons?
20 A. No.

21 MS. WALBURN: Thank you. I have no further
22 questions.

23 THE COURT: You may step down.

24 MR. WEBER: I just have a very few, if I
25 might, Your Honor.

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1 THE COURT: Well is it something new? We
2 haven't covered anything new that I see there. We
3 aren't going to just go over it again.

4 MR. WEBER: That's a fair point, Your
5 Honor.

6 THE COURT: Okay. You may step down.

7 THE WITNESS: Thank you, Your Honor.

8 (Witness excused.)

9 MR. CIRESI: Your Honor, we're going to
10 move to videotape depositions now. I think it may
11 take just a couple minutes to make sure we're set up
12 for that.

13 THE COURT: You want to --

14 MR. CIRESI: Maybe a short break.

15 THE COURT: -- recess? Should we do that?

16 Okay. Let's take a very short recess. Don't go
17 too far.

18 THE CLERK: Court stands in recess.

19 (Recess taken.)

20 THE CLERK: All rise. Court is again in
21 session.

22 (Jury enters the courtroom.)

23 THE CLERK: Please be seated.

24 THE COURT: Counsel.

25 MR. CIRESI: Thank you, Your Honor. The

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1 first videotape will be of Dr. Murray Senkus, the
2 former director of scientific affairs for RJR,
3 calling pursuant to Rule 611(c).

4 THE COURT: You may want to tell the jury
5 what 611(c) is, counsel.

6 MR. CIRESI: Yes, Your Honor. It's --

7 We're calling for adverse examination, just as
8 we called some of the live witnesses of the
9 defendants, such as Mr. Bible and Mr. Schindler, Mr.

10 Merryman and Dr. Glenn.
11 THE COURT: Thank you.
12 (Videotape played.)
13 MR. CIRESI: Your Honor, Exhibit -- Trial
14 Exhibit 3305 will be referred to by Dr. Senkus in the
15 deposition as Exhibit 1054, so this is Exhibit 3305,
16 and we would offer that exhibit.
17 MR. BIERSTEEKER: No objection, Your Honor.
18 THE COURT: Court will receive 3305.
19 (Videotape continued to be played.)
20 MR. BIERSTEEKER: Your Honor, I would
21 interpose an objection to the question appearing on
22 page 131, lines 17 through 18, as being vague and
23 ambiguous.
24 THE COURT: The objection is overruled.
25 You may answer.

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1 (Videotape continued to be played.)
2 MR. BIERSTEEKER: Your Honor, I have the
3 same objection to the next question at page 131,
4 lines 23 through 25.
5 THE COURT: Okay. That question may be
6 asked and the answer given.
7 (Videotape continued to be played.)
8 MR. BIERSTEEKER: Your Honor, I have an
9 objection to the next question on page 132, lines 14
10 through 16, as calling for a legal conclusion.
11 THE COURT: The objection is sustained.
12 MR. BIERSTEEKER: And I think, then, the
13 next question I had the same objection to, that's on
14 page 132, lines 21 through 23, Your Honor.
15 THE COURT: The objection is sustained.
16 MR. BIERSTEEKER: And before I sit down,
17 then, I have an objection to the next question, which
18 appears on page 133, lines three through five, on the
19 form of the question as vague and ambiguous.
20 THE COURT: You may answer that.
21 (Videotape continued to be played.)
22 MR. BIERSTEEKER: Your Honor, I object to
23 the form of the question appearing at page 134, lines
24 one through five, as being vague and ambiguous.
25 THE COURT: Okay. You may answer that

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1 question.
2 (Videotape continued to be played.)
3 MR. BIERSTEEKER: Object to this question
4 that started to be played, it appears at page 135,
5 lines 18 through 22 of the transcript of the
6 deposition, because it assumes facts not in evidence,
7 Your Honor.
8 THE COURT: Overruled.
9 (Videotape continued to be played.)
10 MR. BIERSTEEKER: I have an objection, Your
11 Honor, to the next question appearing at page 136,
12 lines eight through nine of the transcript, on the
13 grounds that it's an argumentative question.
14 THE COURT: Overruled.

15 (Videotape continued to be played.)
16 MR. BIERSTEEKER: I have an objection, Your
17 Honor, to the question at page 136, lines 18 through
18 20, on the grounds that it assumes facts not in
19 evidence.
20 THE COURT: Okay. The objection is
21 sustained.
22 (Videotape continued to be played.)
23 MR. CIRESI: Your Honor, the next exhibit
24 is identified in the transcript as 1082, it has
25 previously been marked and introduced into evidence
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1 in the case as 12756. It was introduced during Mr.
2 Schindler's testimony. 12756.
3 THE COURT: All right, counsel.
4 (Videotape continued to be played.)
5 MR. BIERSTEEKER: Your Honor, I'd object to
6 the question appearing on page 143 of the
7 transcripts, lines 13 to 14, on the grounds that it's
8 compound.
9 THE COURT: Overruled.
10 (Videotape continued to be played.)
11 MR. BIERSTEEKER: Your Honor, I would object
12 to the question appearing on page 144 in the
13 transcript, lines eight through 11, on the grounds
14 that it's asked and answered and argumentative.
15 THE COURT: You may --
16 Overruled.
17 (Videotape continued to be played.)
18 MR. BIERSTEEKER: Your Honor, I have several
19 objections to the next question at page 147, lines 13
20 through 17, that it lacks foundation and is vague and
21 ambiguous.
22 THE COURT: Overruled.
23 (Videotape continued to be played.)
24 MR. BIERSTEEKER: Your Honor, I'd object to
25 the compound nature of the question appearing at
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1 transcript page 148 through -- lines four through
2 eleven.
3 THE COURT: Objection sustained.
4 (Videotape continued to be played.)
5 MR. BIERSTEEKER: Your Honor, I object to
6 the next question at page 149 of the transcript,
7 lines eight through 13, as being argumentative.
8 THE COURT: Overruled.
9 MR. BIERSTEEKER: I have the same objection,
10 Your Honor, to the next question, page 149 to 150,
11 lines 22 through 25 on 149, and line one on 150.
12 THE COURT: Overruled.
13 (Videotape continued to be played.)
14 MR. BIERSTEEKER: Your Honor, I believe the
15 next question, page 150, lines eight through 11, is
16 argumentative.
17 THE COURT: Overruled.
18 (Videotape continued to be played.)
19 MR. BIERSTEEKER: Same objection, Your

20 Honor, to the question appearing at page 150 of the
21 transcript, lines 17 to 24.
22 THE COURT: Overruled.
23 (Videotape continued to be played.)
24 MR. BIERSTEKER: Object to the compound
25 nature of the question on page 153 of the transcript,
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1 lines seven through 12, Your Honor.
2 THE COURT: Sustained.
3 (Videotape continued to be played.)
4 MR. BIERSTEKER: Objection to the next
5 question, Your Honor, page 153, lines 20 and 21 of
6 the transcript, as having been asked and answered.
7 THE COURT: Overruled.
8 (Videotape continued to be played.)
9 MR. BIERSTEKER: Objection to the
10 speculative and argumentative nature of the question
11 appearing at page 154, lines eight through 12 of the
12 transcript, Your Honor.
13 THE COURT: Overruled.
14 (Videotape continued to be played.)
15 MR. BIERSTEKER: Your Honor, there are a
16 series of questions on pages 159 through 164 of the
17 transcript where Dr. Senkus is being questioned
18 concerning a Philip Morris document about which he
19 lacked personal knowledge, and I would object to
20 those questions.
21 THE COURT: Overruled.
22 (Videotape continued to be played.)
23 MR. CIRESI: Your Honor, Deposition Exhibit
24 1083 is Trial Exhibit 2549. 2549.
25 THE COURT: All right, counsel.
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1 (Videotape continued to be played.)
2 MR. BIERSTEKER: Object to the next
3 question, Your Honor, on page 170 of the transcript,
4 lines 16 through 17, as having been asked and
5 answered.
6 THE COURT: Overruled.
7 (Videotape continued to be played.)
8 MR. BIERSTEKER: Your Honor, I object to
9 the question starting on the page 170, line 25, and
10 continuing to page 171, line three, as having been
11 asked and answered.
12 THE COURT: Sustained.
13 (Videotape continued to be played.)
14 MR. BIERSTEKER: Your Honor, the question
15 in the transcript beginning at line 21 on page 171
16 and continuing through page 177 concerns a Philip
17 Morris document that is beyond the scope of the
18 personal knowledge of the witness. I object on that
19 grounds.
20 THE COURT: Overruled.
21 MR. CIRESI: Your Honor, the exhibit which
22 will be referred to in the deposition as 1084 is
23 Trial Exhibit 2546, 2546, and it has already been
24 admitted.

25 (Videotape continued to be played.)
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1 MR. BIERSTEKER: I object to the next
2 question, Your Honor, at page 175 of the transcript,
3 lines 14 through 17, as assuming facts not in
4 evidence.
5 THE COURT: Overruled.
6 (Videotape continued to be played.)
7 MR. BIERSTEKER: I also object to the next
8 question, Your Honor, at page 175, lines 22 through
9 24, as seeking an improper opinion.
10 THE COURT: Overruled.
11 (Videotape continued to be played.)
12 MR. BIERSTEKER: Your Honor, I object to
13 the next question, page 177 of the transcript, lines
14 10 through 14, as calling for a legal conclusion.
15 THE COURT: Overruled. You may answer
16 that.
17 (Videotape continued to be played.)
18 MR. BIERSTEKER: Object on the same
19 grounds, the question calls for a legal conclusion,
20 to the question appearing at page 178, lines five
21 through seven of the transcript, Your Honor.
22 THE COURT: Overruled.
23 (Videotape continued to be played.)
24 MR. BIERSTEKER: Your Honor, I object to
25 the next question as being already asked and
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ADVERSE EXAMINATION - MURRAY SENKUS (VIA VIDEOTAPE)
7497

1 answered, that's at page 178 of the transcript, lines
2 20 through 23.
3 THE COURT: Sustained.
4 (Videotape continued to be played.)
5 MR. BIERSTEKER: Your Honor, for the
6 record, Plaintiffs' Exhibit 1082, as Mr. Ciresi said
7 earlier, is Trial Exhibit 12756.
8 THE COURT: All right, counsel.
9 MR. CIRESI: Yes, that's correct, Your
10 Honor. We're now back to Mr. O'Fallon asking
11 questions.
12 (Videotape continued to be played.)
13 THE COURT: Counsel, I'm afraid I just lost
14 the --
15 MR. CIRESI: I misspoke. We designated
16 this, Your Honor. It's still --
17 We're at page 336, it's the plaintiffs'
18 designation, still Mr. Crist asking the questions.
19 THE COURT: And what line are you on?
20 MR. CIRESI: It starts at page 336, line
21 four, Your Honor. Actually line two.
22 MR. BIERSTEKER: I think the confusion,
23 Your Honor, was that Mr. Ciresi said that it was Mr.
24 O'Fallon's questioning, and in fact it was still Mr.
25 Crist continuing.
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7498

1 THE COURT: It was confusing.
2 MR. CIRESI: It's in -- it's in volume two,
3 Your Honor.
4 THE COURT: I know where it's at, --
5 MR. CIRESI: Okay.
6 THE COURT: -- but it's not Mr. O'Fallon
7 questioning; correct?
8 MR. CIRESI: It is our designation and Mr.
9 Crist still asking the questions.
10 THE COURT: All right, fine. I'm with you.
11 (Videotape continued to be played.)
12 MR. CIRESI: Your Honor, excuse me, I'm
13 going to object, this is the defendants' designation
14 and it's irrelevant, immaterial.
15 THE COURT: Sustained.
16 MR. CIRESI: It goes down to line two at
17 page 367, and then Mr. O'Fallon picks up the
18 questioning again on behalf of the plaintiffs.
19 THE COURT: Sustained.
20 (Videotape continued to be played.)
21 MR. CIRESI: That completes Mr. Senkus's
22 deposition, Your Honor.
23 THE COURT: We'll recess for lunch,
24 reconvene at 1:30.
25 THE CLERK: Court stands in recess, to
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ADVERSE EXAMINATION - MURRAY SENKUS (VIA VIDEOTAPE)
7499

1 reconvene at 1:30.
2 (Recess taken.)
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ADVERSE EXAMINATION - ROBERT SANFORD (VIA VIDEOTAPE)
7500

1 AFTERNOON SESSION.
2 THE CLERK: All rise. Court is again in
3 session.
4 (Jury enters the courtroom.)
5 THE CLERK: Please be seated.

6 THE COURT: Counsel.
7 MR. CIRESI: Thank you, Your Honor. The
8 plaintiffs will next call, again by video deposition
9 and again pursuant to Rule 611, Robert Sanford, who
10 at the time he retired in 1985 was vice-president of
11 products and process development at Brown &
12 Williamson.

13 (Videotape played.)
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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
7501

1 MR. CIRESI: Your Honor, the next
2 deposition is of Byron F. Price, again it's pursuant
3 to Rule 611, that's P-r-i-c-e, Byron Price, and at
4 the time he left American in 1995, his last job was
5 research director, as of March 1, 1995.

6 (Videotape played.)

7 MR. BERNICK: Your Honor, could we have a
8 brief side-bar on this, this exchange?

9 THE REPORTER: Can I have a citation,
10 please, citation to the transcript?

11 MR. BERNICK: This is at page 45, line 11.
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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
7502

1 (Side-bar conversation as follows:)
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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
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(Side-bar conversation concluded.)

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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
7506

1 THE COURT: Mr. Bernick.
2 MR. BERNICK: Yes. As we indicated, Your
3 Honor, we have certain objections that will appear in
4 the -- in the tape that we are not standing on in
5 connection with this testimony, so although
6 objections appear in the tape, we are not lodging
7 those objections to the testimony being offered.
8 THE COURT: All right. Let's proceed.
9 (Videotape continued to be played.)
10 MR. CIRESI: Your Honor, Exhibit 1128 is
11 Trial Exhibit 3379, and we would offer 3379.
12 MR. BERNICK: Your Honor, we object, this
13 is a newspaper article, it's hearsay. If they want
14 to play the portion of the testimony that relates to
15 statements made by the company, we have no objection
16 to that, but we have an objection to the article
17 coming in because it's hearsay.
18 MR. CIRESI: It's offered under 901(6) for
19 its authentication, and 801(d)(2), it's an admission,
20 they are citing the president of American, Mr.

21 Walker, and it's quoted within the article.
22 MR. BERNICK: Your Honor, only that portion
23 that contains the quotation would be an admission and
24 we have no objection to that. Our objection is to
25 the balance of the article, which is hearsay.

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ADVERSE EXAMINATION - BYRON F. PRICE (VIA VIDEOTAPE)
7507

1 THE COURT: Sure wish I could read it.

2 MR. BERNICK: I think, Your Honor, the
3 witness does read from the relevant portions -- or is
4 asked about the relevant portions of it, so the jury
5 will be able to hear the statement that has been
6 made.

7 THE COURT: I understand that, but --

8 MR. BERNICK: I'm sorry.

9 THE COURT: -- I'd still like to read it,
10 but the print is so bad it's hard.

11 Court will receive 3379.

12 (Videotape continued to be played.)

13 MR. CIRESI: The next exhibit, Your Honor,
14 is Deposition Exhibit 1129, and it is Trial Exhibit
15 3380, and we offer 3380.

16 MR. BERNICK: No objection, Your Honor.

17 THE COURT: Court will receive 3380.

18 (Videotape continued to be played.)

19 MR. BERNICK: Your Honor, we'd object to
20 the next question which appears at page 102, line
21 one, as argumentative.

22 THE COURT: The objection is overruled.

23 (Videotape continued to be played.)

24 MR. CIRESI: That concludes that
25 deposition, Your Honor.

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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7508

1 The next deposition is of David Wilson, who is
2 the corporate secretary for B.A.T Industries P.L.C.,
3 David Wilson, and again we'd call him pursuant to
4 Rule 611.

5 MR. BERNICK: Your Honor, before we
6 start, before we commence that, Your Honor asked for
7 some correspondence relating to the last deposition,
8 I can tender that up to the court now.

9 MR. CIRESI: Do you have copies, counsel?

10 MR. BERNICK: It's the February 17th
11 letter.

12 (Document handed to the court.)

13 (Videotape played.)

14 MR. CIRESI: Your Honor, the Deposition
15 Exhibit 621 is Trial Exhibit 3034, and we offer 3034.

16 MR. CORRIGAN: No objection, Your Honor.

17 THE COURT: Court will receive 3034.

18 (Videotape continued to be played.)

19 MR. CIRESI: Your Honor, the next exhibit
20 is referenced in the transcript as 281, it is Trial
21 Exhibit 2690.

22 MR. CORRIGAN: No objection, Your Honor.

23 THE COURT: Court will receive 2690.

24 (Videotape continued to be played.)

25 MR. CIRESI: Your Honor, the next exhibit

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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7509

1 in the transcript is 285, and that is being
2 introduced as Trial Exhibit No. 2694, 2694.
3 MR. CORRIGAN: No objection, Your Honor.
4 THE COURT: Court will receive 2694.
5 (Videotape continued to be played.)
6 MR. CIRESI: The next exhibit, Your Honor,
7 is 622 in the transcript, and that will be Trial
8 Exhibit 3035, 3035, and we'd offer it.
9 MR. CORRIGAN: No objection, Your Honor.
10 THE COURT: Court will receive 3035.
11 (Videotape continued to be played.)
12 MR. CIRESI: Your Honor, at that point
13 there's an objection which I think we need to deal
14 with at side-bar.
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7510

1 (Side-bar discussion as follows:)
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23 (Side-bar conversation concluded.)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7511

1 THE COURT: We'll need to take a short

2 recess at this time.
3 THE CLERK: Court stands in recess.
4 (Recess taken.)
5 THE CLERK: All rise. Court is again in
6 session.
7 (Jury enters the courtroom.)
8 THE CLERK: Please be seated.
9 (Videotape continued to be played.)
10 MR. CIRESI: Your Honor, the next exhibit
11 is referenced in the tape as Exhibit 317, and it is
12 Trial Exhibit 2726, and we would offer that, Your
13 Honor.
14 MR. CORRIGAN: No objection, Your Honor.
15 THE COURT: Court will receive 2726.
16 (Videotape continued to be played.)
17 MR. CIRESI: Your Honor, the next exhibit
18 referenced in the transcript is Exhibit 623, and that
19 will be admitted as Trial Exhibit 3036, 3036.
20 MR. CORRIGAN: No objection, Your Honor.
21 THE COURT: Court will receive 3036.
22 (Videotape continued to be played.)
23 MR. CIRESI: Your Honor, the next exhibit
24 is referenced in the transcript tape as 624, and it
25 is being introduced as Exhibit 3037, Trial Exhibit
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7512

1 3037.
2 MR. CORRIGAN: No objection, Your Honor.
3 THE COURT: Court will receive 3037.
4 (Videotape continued to be played.)
5 MR. CIRESI: That concludes Mr. Wilson's
6 deposition, Your Honor.
7 The last deposition is of Roger R. Black. I
8 believe, Your Honor, we need to -- Mr. Bernick would
9 like to address an issue on this deposition.

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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
7513

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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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(Side-bar concluded.)

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ADVERSE EXAMINATION - DAVID WILSON (VIA VIDEOTAPE)
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THE COURT: Sorry for the delay.
We have a deposition that's going to be read and
seen, as we have for the last few depositions, but
there are some questions that the court needs to
resolve before we proceed with the deposition, so we
will start that deposition and Monday morning when we
return to testimony. And as a reward for your
patience the last 15 minutes, we'll let you out 10
minutes early. Okay?
Tomorrow is document day, you recall. Okay.
THE CLERK: Court stands in recess to
reconvene tomorrow morning at 9:30.
(Recess taken.)

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